

LAND SALES ACT Act 286 of 1972

AN ACT to regulate the disposition of lots, parcels, units or interests in lands within real estate subdivisions; to require registration; to protect the purchaser from unfair and deceptive trade practices; to provide for the filing of bonds and performance assurances; to regulate advertising, promotions and sales contracts; to provide for the payment of fees; and to provide penalties.

History: 1972, Act 286, Eff. Mar. 30, 1973.

The People of the State of Michigan enact:

565.801 Short title.

Sec. 1. This act shall be known and may be cited as the “land sales act”.

History: 1972, Act 286, Eff. Mar. 30, 1973.

Compiler's note: For effective date of provisions pertaining to the offering of subdivided lands for disposition, see MCL 565.835 .

Transfer of powers: See MCL 16.732.

565.802 Definitions.

Sec. 2. As used in this act:

(a) “Advertising” means the publication or causing to be published of all material which has been prepared for public distribution by any means of communication. The term does not include stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities, prospectuses, applications for listing securities on stock exchanges, and the like; prospectuses, property reports, offering statements, or other documents required to be delivered to prospective purchaser by an agency of another state or the federal government; all communications addressed to and relating to the account of persons who have previously executed a contract for the purchase of the developer's lands, except where directed to the sale of additional lands.

(b) “Agent” means any person who represents, or acts for or on behalf of, a developer in disposing of subdivided lands or lots in a subdivision, and includes a real estate broker as defined in Act No. 306 of the Public Acts of 1919, as amended, being sections 451.201 to 451.219 of the Michigan Compiled Laws, but does not include an attorney at law whose representation of another person consists solely of rendering legal services.

(c) “Blanket encumbrance” means a trust deed or mortgage or mechanics lien or any other lien or financial encumbrance, securing or evidencing money debt and affecting lands to be subdivided or affecting more than 1 lot, parcel, unit, or interest of subdivided land; or an agreement affecting more than 1 lot, parcel, unit, or interest by which the developer holds the subdivision under an option, contract to purchase, or trust agreement, except a lien or other encumbrance arising as a result of the imposition of a tax assessment by a public authority so long as no portion thereof is past due.

(d) “Contiguous land” means any additional subdivided land adjacent to or adjoining the subdivided land included in any earlier subdivision for which a certificate of registration has been issued and which is offered under the same common subdivision name and the same common promotional plan of advertising and disposition.

(e) “Department” means the department of licensing and regulation.

(f) “Developer” means a person, or his agent, who, directly or indirectly, offers subdivided land for disposition, or who advertises subdivided land for disposition.

(g) “Director” means the director of the department of licensing and regulation or any person designated by him to act in his place.

(h) “Disposition” means a sale, lease, option, assignment, award by lottery or as a prize, or any offer or solicitation of an offer to do any of the foregoing concerning a subdivision or any part of a subdivision.

(i) “Notice” means a communication by mail from the department. Notice to developers shall be deemed complete when mailed certified return receipt requested to the developer's address currently on file with the department.

(j) “Offer” means every inducement, solicitation, or encouragement of a person to acquire a lot, unit, parcel, or interest in subdivided land.

(k) “Option” means, and is limited to, an offer to sell or to purchase respecting which a consideration of not more than 15% of the total purchase price is exchanged to guarantee that the offer will not be withdrawn or revoked for an agreed period of time.

(l) "Person" means an individual, corporation, government or governmental division or agency, business trust, estate, trust, partnership, unincorporated association, 2 or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(m) "Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in land.

(n) "Subdivision" and "subdivided land" means any land, wherever located, improved or unimproved, which is divided or proposed to be divided for the purpose of disposition into 25 or more lots, parcels, units, or interests, and includes any portion thereof. Subdivided lands include land located outside this state which is promoted by mail, telephone calls, solicitation, or advertisements within or directed into this state. The terms include any land, whether contiguous or not, if 25 or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale where subdivided land is offered for disposition by a single developer or a group of developers acting in concert. If the land is contiguous or is known, designated, or advertised as a common unit or by a common name the land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for disposition as part of a common promotional plan.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

565.803 Regulation and administration.

Sec. 3. The disposition of lots, parcels, units or interests in land from subdivisions is subject to regulation and control pursuant to this act which is to be administered by the department.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.804 Offers or dispositions to which act inapplicable.

Sec. 4. Unless the method of disposition is adopted for the purpose of evasion of this act, as the procedure for application for and approval of exemption is determined by rules of the department, this act does not apply to offers or dispositions of an interest in land:

(a) By a purchaser of subdivided land for his or her own account in a single or isolated transaction.

(b) If fewer than 25 separate lots, parcels, units, or interests in subdivided land are offered or to be offered after September 30, 1973.

(c) On which lot, parcel, or unit there is a commercial or industrial building, shopping center, dwelling unit, or apartment, or as to which there is a legal obligation on the part of the seller or his or her assignee or agent to construct a commercial or industrial building, shopping center, dwelling unit, or apartment within 2 years from date of sale, lease, option, assignment, award by lottery, or as a prize.

(d) For cemetery lots or interests.

(e) A subdivision as to which the plan of sale is to dispose to 10 or fewer persons.

(f) To any person who acquires the lots for the purpose of engaging in and does engage in, or who is engaged in the business of constructing residential, commercial, or industrial buildings for the purpose of resale; or constructing commercial or industrial buildings for his or her own use; or the lease of the lots to persons engaged in the business of constructing residential, commercial, or industrial buildings for the purpose of resale.

(g) Pursuant to court order.

(h) Securities currently registered or securities transactions exempted by order of the corporation and securities bureau of the department of commerce.

(i) By a person electing to make offers or dispositions under any 2 or more different exemptions.

(j) A campground developed pursuant to former Act No. 171 of the Public Acts of 1970 or Act No. 368 of the Public Acts of 1978, as amended, being sections 333.1101 to 333.25211 of the Michigan Compiled Laws, or a mobile home park developed pursuant to former Act No. 243 of the Public Acts of 1959, as amended, or Act No. 419 of the Public Acts of 1976, as amended, being sections 125.1101 to 125.1147 of the Michigan Compiled Laws.

(k) In a subdivision which has fewer than 50 lots, parcels, units, or interests and which has been fully recorded under Act No. 288 of the Public Acts of 1967, as amended, being sections 560.101 through 560.293 of the Michigan Compiled Laws, in the office of the registrar of deeds and in which no amenities are promised or advertised. Nothing in this section 4(k) shall limit the application of section 27 to a developer or agent of the developer.

(l) To the owner of adjacent land on which there is a commercial or industrial building, shopping center, dwelling unit, or apartment.

(m) Which is used or will be used for agricultural purposes.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974;—Am. 1980, Act 111, Imd. Eff. May 14,

1980.

565.805 Additional offers or dispositions to which act inapplicable; condominiums.

Sec. 5. Unless the method of disposition is adopted for the purpose of evasion of this act, as the procedure for application for and approval of exemption is determined by rules of the department, the provisions of this act do not apply to:

(a) Offers or dispositions of evidences of indebtedness secured by a mortgage or deed of trust of real estate.

(b) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute.

(c) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest in oil, gas, or other minerals if the offers or dispositions of the interest are regulated as securities by the United States or by an agency of this state.

(d) Condominiums located in this state and regulated by the corporation and securities bureau of the department of commerce.

(e) Offers or dispositions of an interest in land by or to a state agency, city, village, township, county, or any other governmental unit, or United States governmental unit, body, or subdivision.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974;—Am. 1980, Act 111, Imd. Eff. May 14, 1980.

565.806 Registration of subdivided lands required; delivery and examination of current property report; unfair and deceptive acts and practices; contract, agreement, or evidence of indebtedness; notice to purchaser; rescission; notice to developer; waiver.

Sec. 6. Unless the subdivided lands or the transaction is exempt by this act:

(a) A person may not offer or dispose of any interest in subdivided lands located in this state nor offer or dispose in this state of any interest in subdivided lands located without this state prior to the time the subdivided lands are registered in accordance with this act.

(b) A person may not dispose of any interest in subdivided lands unless a current property report is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the property report prior to the disposition.

(c) A person may not engage in any unfair or deceptive act or practice in the conduct of and disposition of subdivided lands. Disposition of subdivided lands by option on an option or by assignment of less than the total options held by the seller, is presumed to be an unfair and deceptive practice. Disposition by instrument purporting to be an option is presumed unfair and deceptive if the stated consideration for the purported option exceeds 15% of the purchase price of the subdivided land or if the option does not separately state the purchase price.

(d) Any contract or agreement for the disposition of a lot, parcel, unit or interest in a subdivision covered by this act, where the property report has not been given to the purchaser in advance of the time of his signing, is voidable at the discretion of the purchaser. In addition, the purchaser has an unconditional right to rescind any contract, agreement or other evidence of indebtedness between the purchaser and the developer, or revoke any offer within 5 days from the date the purchaser actually receives a legible copy of the signed contract, agreement, or other evidence of indebtedness, or offer and the property report as provided in this act. Predating of a document does not defeat the time in which the right to rescind may be exercised. The burden of proof the document was not predated is upon the developer. An act of the developer in assigning or pledging a contract or agreement shall not waive the purchaser's right to void or rescind the contract or agreement as provided by this subsection. Each contract or agreement shall be prominently labeled and captioned that it is a document taken in connection with a sale or other disposition of lands under this act.

Each contract or agreement for the disposition of a lot, parcel, unit, or interest in a subdivision shall prominently contain upon its face the following notice printed in at least 8 point type which shall be at least 4 point bold type larger than the body of the document stating:

NOTICE TO PURCHASER

YOU ARE ENTITLED TO CANCEL THIS AGREEMENT AT ANY TIME IF YOU HAVE NOT RECEIVED THE PROPERTY REPORT IN ADVANCE OF YOUR SIGNING OF THIS AGREEMENT. IN ADDITION, YOU ARE ENTITLED TO CANCEL THIS AGREEMENT FOR ANY REASON WITHIN 5 DAYS FROM THE DAY YOU ACTUALLY RECEIVE A LEGIBLE COPY OF THIS DOCUMENT.

The contract or agreement shall contain sufficient space

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upon its face in immediate conjunction with the above notice for the signature of each person obligated under the instrument acknowledging that the person has read the notice. A third party who is unrelated to the developer may, in connection with the purchase of, or the making of a loan secured by such contracts or agreements, rely on a document furnished by the developer, and signed by a purchaser acknowledging receipt of a property report in advance of signing a contract or agreement.

Rescission occurs when the purchaser gives written notice to the developer at the address stated in the contract or agreement. Notice of rescission if given by mail is effective when it is deposited in a mailbox properly addressed and postage prepaid. A notice of rescission given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the purchaser not to be bound by the contract or agreement.

(e) No act of a purchaser shall be effective to waive the right to rescind as provided in this section. However, the right of rescission terminates 5 years after the date the purchaser signs the contract or agreement.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

565.807 Application; filing; form; fee; signature; contents.

Sec. 7. Before subdivided lands are offered for disposition, the developer shall file with the department an application upon forms to be supplied by the department. A registration fee shall accompany the application. The application may be filed before a plat has been recorded as provided for in section 172 of Act No. 288 of the Public Acts of 1967, being section 560.172 of the Michigan Compiled Laws, provided the plat has received final approval of the preliminary plat under section 120, as amended, of that act. The application shall be filed as prescribed by the department's rules. The application shall be signed by an authorized agent of the applicant and include, but is not limited to, the following documents and information:

(a) An irrevocable appointment of the department to receive service of any lawful process in any civil proceeding arising under this act against the developer or his agent.

(b) The applicant's name and address, and the forms, date, and jurisdiction of the organization; and the address of each of its resident agents, officers, and directors in the state; the name, address, and principal occupation for the past 5 years of every director and officer and each owner of 10% or more of the shares of the applicant and any person occupying a similar status or performing similar functions; the extent and nature of his interest in the applicant and the subdivided lands as of a specified date within 30 days of the filing of the application.

(c) A legal description of, based on a survey by a professional land surveyor, and a statement of the total area included in the subdivision, and a statement of the topography thereof, together with a map showing the division proposed or made, the dimensions of the lots, parcels, units, or interests and the relation of the subdivided lands to existing streets, roads, and other off-site improvements.

(d) The states or jurisdictions in which an application for registration or similar document has been filed and any order, judgment, or decree entered in connection with the subdivided lands by the regulatory authorities in each jurisdiction or by any court.

(e) A statement, in a form acceptable to the department, of the condition of the title to the land comprising the subdivision, including all encumbrances and deed restrictions and covenants applicable thereto with data as to recording.

(f) Copies of the instruments by which the interest in the subdivided lands was acquired or proof of marketable title to subdivided lands.

(g) Copies of instruments which will be delivered to a purchaser to evidence his interest in the subdivided lands and of the contracts and other agreements which a purchaser will be required to agree to or sign, together with the range of selling prices, rents, or leases at which it is proposed to dispose of the lots, units, parcels, or interests in the subdivisions.

(h) Copies of instruments creating, altering, or removing easements, restrictions, or other encumbrances affecting the subdivided lands.

(i) A statement of the present condition of access to the subdivision, the availability of sewage disposal facilities and other public utilities, including water, electricity, gas, and telephone facilities, in the subdivision, the proximity in miles of the subdivision to nearby municipalities and the nature of any improvements to be installed and by whom they are to be installed and paid for and an estimated schedule for completion, together

with a statement as to the provisions for improvement maintenance.

(j) A statement of the current zoning and any existing tax and existing or proposed special assessments which affect the subdivided lands.

(k) If there is a blanket encumbrance against any subdivision or portion thereof, a description of the encumbrance and a statement of the consequences for an individual purchaser of a failure by the persons bound to fulfill obligations under the instrument creating the encumbrance and the steps, if any, taken to protect the purchaser in such eventuality.

(l) A narrative description of the promotional plan for the disposition of the subdivided lands together with copies of all advertising material which has been prepared for public distribution by any means of communication.

(m) Such financial statements of the developer as the department may require.

(n) The proposed property report.

(o) A statement that the developer has or has not been subject to any injunction or administrative order entered within the past 10 years restraining a false or misleading promotional plan involving land dispositions.

(p) Such other information and such other documents and certifications as the department may require as being reasonably necessary or appropriate for the protection of purchasers.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

565.808 Form and contents of property report.

Sec. 8. The property report shall disclose fully and accurately the physical characteristics of the subdivided lands offered and shall make known to prospective purchasers all unusual and material conditions relating to noise, health, safety, and welfare which affect the subdivision and are known to the developer. The proposed property report submitted to the department shall be in a form prescribed by its rules and shall include the following:

(a) The name and principal address of the developer.

(b) A general description of the subdivided lands stating the total number of lots, parcels, units, or interests in the offering.

(c) The significant terms of any encumbrances, easements, liens, and restrictions, including the current zoning classification and the name and address of the governmental office where a complete current copy of the zoning ordinances may be inspected, affecting the subdivided lands and each lot, unit, parcel, or interest and a statement of all existing taxes and existing or proposed special assessments which affect the subdivided lands.

(d) A statement of the use for which the property is offered.

(e) Information concerning existing or proposed improvements, including streets, water supply levels, drainage control systems, irrigation systems, sewage disposal systems, and customary utilities and the estimated cost, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any lot, unit, parcel, or interest in subdivided lands.

(f) The following statement: "This property may be located in the vicinity of a farm or farm operation. Generally accepted agricultural and management practices may be utilized by the farm or farm operation and may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Michigan right to farm act. The seller is not required to disclose whether a farm or farm operation is actually located in the vicinity of the property or whether generally accepted agricultural and management practices are being utilized."

(g) Such additional information as may be required by the department to assure full and fair disclosure to prospective purchasers.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974;—Am. 1995, Act 84, Eff. Sept. 30, 1995.

565.809 Prohibited uses of property report.

Sec. 9. The property report shall not be used for any promotional purposes. A person may not advertise or represent that the department approved or recommends the subdivided lands or disposition thereof. A portion of the property report may not be underscored, italicized or printed in larger or heavier or different color type than the remainder of the statement unless the department requires it.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.810 Alteration or amendment of proposed property report; approval of changes; incorporation of amendments; advertising and disposition pending approval.

Sec. 10. The department may require the developer to alter or amend the proposed property report in order to assure full and fair disclosure to prospective purchasers and a change in the substance of the promotional plan or plan of disposition or development of the subdivision may not be made after registration without prior written approval of the department nor without approval of appropriate amendment of the property report. A property report is not current unless all amendments are incorporated. The department may allow, in writing, continued advertising and disposition pending approval of amendment.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.811 Consolidation of registrations; amendment of property report; rejection; statement of deficiencies.

Sec. 11. If the developer registers additional subdivided lands to be offered for sale, he may consolidate the subsequent registration with any earlier registration under this act offering subdivided lands for sale under the same promotional plan, and the property report shall be amended to include the additional lands so registered. The consolidation of registration of additional subdivided lands shall be deemed registered after 30 days unless a rejection is entered issuing a specific statement of the deficiencies within 30 days thereof or a delay agreed upon.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

565.812 Application for registration; reporting changes in information.

Sec. 12. The developer shall report immediately any material changes in the information contained in the application for registration.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.813 Conditions for registration; examination to determine compliance.

Sec. 13. Upon receipt of an application for registration in proper form, the department shall initiate an examination to determine compliance with the following conditions for registration:

(a) The developer can convey or cause to be conveyed the interest in subdivided lands offered for disposition if the purchaser complies with the terms of the offer and when appropriate, that release clauses, conveyances in trust or other safeguards have been provided.

(b) There is reasonable assurance that all proposed improvements will be completed as represented.

(c) The advertising material and the general promotional plan are not false or misleading and comply with department rules and afford full and fair disclosure.

(d) The developer has not, or if a corporation, its officers, directors and principals have not, been convicted of a crime involving lands dispositions or any aspect of land sales business in this state, the United States or any other state or foreign country within the past 10 years.

(e) The property report requirements of this act have been satisfied.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.814 Notice of filing; registration order; order of rejection; amendment of application; certificate of registration; correction of application; receipt of amendment or report of material change; suspension of certificate; untrue statement or omission of material fact; compliance with subdivision control act.

Sec. 14. (1) Upon receipt of the application for registration in proper form, the department shall issue a notice of filing to the applicant. Within 60 days from the date of the notice of filing, the department shall enter an order registering the subdivided lands or rejecting the registration with notice of specific deficiencies therein. If an order of rejection is not entered within 60 days from the date of notice of filing, the land shall be deemed registered unless the applicant has consented in writing to a delay. If any amendment to the application for registration is filed prior to the time when the land shall be deemed registered, the application shall be deemed to have been filed when the amendment was filed except that an amendment filed with the consent of the department or filed pursuant to an order of the department shall be treated as being filed as of the date of the filing of the original application for registration.

(2) If the department affirmatively determines, upon inquiry and examination, that the requirements of this act and the rules promulgated pursuant to the act have been met, it shall issue a certificate of registration registering the subdivided lands and approve the form of the property report.

(3) If the department determines upon inquiry and examination that any of the requirements of this act or the rules promulgated pursuant to this act have not been met, it shall notify the applicant that the application for registration must be corrected in the particulars specified within 15 days from receipt of notice unless extended in writing by the department. If the requirements are not met within the time allowed, the

department may enter an order rejecting the registration which shall include the findings of fact upon which the order is based.

(4) If at any time subsequent to the issuance of the certificate of registration, a change occurs affecting any material fact required to be contained in the application, the developer shall file an amendment thereto within 30 days. Upon receipt of any amendment or report of material change, if the department determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, it may suspend the certificate of registration until such time as the amendment shall be deemed registered. The amendment shall be deemed to be registered after 30 days unless a rejection is entered or a delay agreed upon.

(5) If it appears to the department at any time that an application, for which there has been issued a certificate of registration, includes any untrue statement of a material fact or omits to state any material fact required by this act or necessary to make the statements not misleading or deceptive, after notice and after an opportunity for hearing at a time fixed by the department within 20 days after the notice, the department may issue an order suspending the registration. When the application has been amended in accordance with the order, the department shall so declare and thereupon the order shall cease to be effective.

(6) The department shall not issue a certificate of registration if it is determined that the offering is for a subdivision of land until the developer complies with the provisions of Act No. 288 of the Public Acts of 1967, as amended, being sections 560.101 to 560.293 of the Compiled Laws of 1948, if the director determines that the subdivision is required to conform to that act.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.815 Developer's report; filing, form, and contents; renewal of certificate of registration.

Sec. 15. (1) Within 30 days after each annual anniversary date of an order registering subdivided lands, the developer shall file a report in the form prescribed by the rules of the department. The report shall reflect any material changes in information contained in the original application for registration.

(2) The department may permit the filing of annual reports within 30 days after the annual anniversary date of the consolidated registration in lieu of the annual anniversary date of the original registration.

(3) A certificate of registration which has not been revoked or is not suspended shall be renewed annually upon compliance with this act.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.816 Conditions for sale of lots, units, parcels, or interests within subdivision subject to blanket encumbrance.

Sec. 16. The developer shall not sell lots, units, parcels, or interests within a subdivision subject to a blanket encumbrance unless 1 of the following conditions or the equivalent as determined by rules promulgated by the department is met:

(a) All sums paid or advanced by purchasers are placed in an escrow or other depository acceptable to the director until the fee title contracted for is delivered to the purchaser by deed together with complete release from all financial encumbrances; or the developer or the purchaser default and fail to perform under their contract of disposition and there is a final determination by a court of competent jurisdiction or the director as to the disbursement of such moneys or they be voluntarily returned to the contract purchaser.

(b) The fee title to the subdivision is placed in trust under an agreement or trust acceptable to the department until a proper release from each blanket encumbrance including all taxes is obtained and title contracted for is delivered to such purchaser.

(c) A bond, cash, certified check, or irrevocable bank letter of credit issued by a bank authorized to do business in the state is furnished the department in the name of the state for the benefit and protection of purchasers of the lots, units, parcels, or interest, in such amount and subject to terms as approved by the department. The bond shall be executed by a surety company authorized to do business in the state and which has given consent to be sued in this state. The bond or agreement accompanying the cash, certified check, or irrevocable bank letter of credit shall provide for the return of moneys paid or advanced by any purchaser, on account of purchase of any lot, unit, parcel, or interest if the title contracted for is not delivered and a full release from each blanket encumbrance is not obtained. If it is determined that the purchaser by reason of default or otherwise, is not entitled to the return of the moneys, or any portion thereof, then the bond, cash, certified check, or irrevocable bank letter of credit may be released by the department in the amount of moneys to which the purchaser of a lot, unit, parcel, or interest is not entitled.

(d) The blanket encumbrance shall contain provisions evidencing the subordination of the lien of the blanket encumbrance to the rights of those persons purchasing from the developer or evidencing that the developer is able to secure releases from the blanket encumbrance with respect to the property.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

565.817 Approval or rejection of advertising material; amendment.

Sec. 17. (1) All advertising material not accompanying the original application shall be submitted to the department for approval prior to its use in the state.

(2) Within 15 days from the date of receipt of the proposed advertising, the department shall enter an order approving or rejecting the advertising. If an order of rejection is not entered within 15 days from the date of receipt, the advertising shall be deemed approved unless the applicant has consented in writing to a delay. If any amendment to the application for approval of advertising is filed prior to the time when the land shall be deemed approved, the application shall be deemed to have been filed when the amendment was filed except that an amendment filed with the consent of the department, or filed pursuant to an order of the department, shall be treated as being filed as of the date of the filing of the original application.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.818 Material used to induce purchaser to visit subdivided land.

Sec. 18. The director may require that any material used by a developer or his agent to induce prospective purchasers to visit the subdivided land contain certain additional pertinent information. The information may include but is not limited to, terms and conditions of the offers and the nature and extent of the developer's participation in the campaign. The director may require reasonable assurances that such obligation incurred by a developer or its agents can be met.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.819 Rules.

Sec. 19. The department shall promulgate rules in accordance with and subject to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Compiled Laws of 1948. The rules shall include but need not be limited to:

- (a) Provisions for advertising standards to assure full and fair disclosure.
- (b) Provisions for escrow or trust or trust agreement or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for and full and fair disclosure in the property report informing the purchaser.
- (c) Provisions for operating procedures.
- (d) Provisions requiring instruments to be executed in recordable form.
- (e) Provisions relating to apportionment of taxes.
- (f) Other rules necessary and proper to accomplish the purpose of this act.

History: 1972, Act 286, Eff. Mar. 30, 1973.

Administrative rules: R 338.3201 et seq. of the Michigan Administrative Code.

565.820 Investigation of subdivision.

Sec. 20. The department shall investigate every subdivision offered for disposition in this state and may:

(a) Rely upon any relevant information concerning subdivided lands obtained from the federal housing administration, the United States veterans administration or any other federal agency having comparable duties in relation to subdivision of real estate.

(b) Accept registrations filed in other states or with the federal government and cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, uniform property reports, advertising standards, rules and common administrative practices. If a statement of record has been filed with and the property report accepted by the federal office of interstate land sales, the department may accept a copy of that statement of record and property report as part of the disclosure requirements under this act and accept an addendum to the statement of record and property report which shall satisfy the addition requirements of this act.

(c) Require the applicant to submit reports prepared by registered or licensed engineers as to any hazard to which any subdivision offered for disposition is subject in the opinion of the department, or any other factor which affects the utility of lots, units, parcels or interests within the subdivision and require evidence of compliance to remove or minimize all hazards stated by competent engineering reports.

(d) Make an on site inspection of each subdivision prior to its registration and periodic on site inspections thereafter. The developer shall defray all actual and necessary expenses incurred by the inspector in the course of the inspection.

(e) Require the developer to deposit with the department the expenses to be incurred in any inspection or reinspection, in advance, based upon an estimate by the department of the expenses likely to be incurred.

(f) Where an on site inspection of any subdivision has been made under this act, an inspection of a subsequent application for registration of contiguous land may be waived and an inspection thereof shall be made at the time of the next succeeding on site inspection.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.821 Contract for disposition of subdivided lands; contents.

Sec. 21. Every contract for disposition of subdivided land shall state clearly the legal description of the lot, unit, parcel or interest disposed of and shall contain disclosures as required by the federal truth in lending act, Public Law 90-321, and the rules promulgated thereunder.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.822 Failure to pay registration and inspection fees; penalty.

Sec. 22. Any developer who fails to pay when due, after written notice by the department, the registration and inspection fees provided in this act and continues to dispose of or offers to dispose of subdivided lands, is liable civilly in an action brought by the attorney general on behalf of the department for a penalty in an amount equal to treble the unpaid fees. The department may suspend or revoke a registration for which any application or inspection fee provided in this act is unpaid, after written notice by the department.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.823 Investigations; statements; oaths or affirmations; subpoenas; order compelling compliance; proceedings.

Sec. 23. (1) The department may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this act or any rule or order hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder.

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this act, the department or any officer designated by rule may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the department may apply to the circuit court of Ingham county for an order compelling compliance.

(4) Except as otherwise provided in this act, all proceedings under this act shall be in accordance with Act No. 306 of the Public Acts of 1969, as amended.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.824 Cease and desist order; order to take affirmative action.

Sec. 24. (1) The department may issue an order requiring a person to cease and desist from the unlawful act and to take such affirmative action as in the judgment of the department will carry out the purposes of this act, if it determines, after notice and hearing, that a person has done any of the following:

(a) Violated any provision of this act.

(b) Directly or through an agent or employee knowingly engaged in any false, deceptive or misleading advertising, promotional or sales methods to offer or dispose of an interest in subdivided lands.

(c) Made any substantial change in the plan of disposition and development of the subdivided lands subsequent to the order of registration without obtaining prior written approval from the department.

(d) Disposed of any subdivided lands which have not been registered with the department.

(e) Violated any lawful order or rule of the department.

(2) If the department makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, it may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the department whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order

shall include in its terms a provision that upon request a hearing will be held within 30 days to determine whether or not it becomes permanent.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.825 Revocation of registration; grounds; notice and hearing; findings of fact; cease and desist order.

Sec. 25. (1) A registration may be revoked after notice and hearing upon a written finding of fact that the developer has done any of the following:

- (a) Failed to comply with the terms of a cease and desist order.
 - (b) Been convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising or dishonest dealing in real estate transactions.
 - (c) Disposed of, concealed or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers.
 - (d) Failed faithfully to perform any stipulation or agreement made with the department as an inducement to grant any registration, to reinstate any registration or to approve any promotional plan or property report.
 - (e) Made intentional misrepresentations or concealed material facts in an application for registration.
- (2) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- (3) If the department finds after notice and hearing that the developer is guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.826 Injunctive relief or temporary restraining order; appointment of receiver or conservator; bond.

Sec. 26. If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of this act or a rule or order hereunder, the department, with or without prior administrative proceedings, may bring an action in circuit court of Ingham county to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted and a receiver or conservator may be appointed. The department is not required to post a bond in any court proceedings.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.827 False or fraudulent statement; misrepresentation; noncompliance with cease and desist order; penalty.

Sec. 27. Every developer or agent of a developer who authorizes, directs, or aids in the publication, advertisement, distribution, or circularization of a false statement or misrepresentation, made with knowledge of its falsity, concerning a subdivision offered for disposition or who knowingly fails to comply with the terms of a final cease and desist order and every person with knowledge that an advertisement, pamphlet, prospectus, or letter concerning a subdivision contains any written statement that is false or fraudulent, who issues, circulates, publishes, or distributes the same or causes the same to be issued, circulated, published, or distributed or who knowingly fails to comply with the terms of a final cease and desist order, is guilty of a felony and may be fined not more than \$25,000.00, or imprisoned not more than 10 years, or both. Each violation constitutes a separate offense.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

565.828 Violation of act; penalty.

Sec. 28. Any violation of this act other than as provided in section 27 is a misdemeanor and every violator may be fined not more than \$2,000.00 or imprisoned for not more than 90 days, or both, for each offense.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.829 Service of process.

Sec. 29. (1) In addition to the methods of service provided for in any other provision of law, service may be made by delivering a copy of the process to the office of the department if the plaintiff, which may be the department in a proceeding instituted by it, does both of the following:

- (a) Sends a copy of the process and of the pleading by registered mail to the defendant or respondent at his last known address.

(b) Files its affidavit of compliance with this section in the case on or before the return day of the process or within such time as the court allows.

(2) If any person, including any nonresident of this state, engages in conduct prohibited by this act or any rule or order and has not filed a consent to service of process and personal jurisdiction over him cannot otherwise be obtained in this state, the conduct authorizes the department to receive service of process in any noncriminal proceeding against him or his successor which grows out of the conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Notice shall be given as provided in subsection (1).

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.830 Fees.

Sec. 30. (1) A registration fee shall be paid with the application for registration as provided in section 35 of the "state license fee act".

(2) A registration fee shall be paid with the filing of an application for registration consolidating additional lots with a prior registration. The fee shall be as provided in section 35 of the "state license fee act".

(3) A fee shall not be charged for an amendment to the property report as a result of an amendment to the initial filing, unless the department determines the amendment is made to avoid the payment of a fee. If the amendment is made to avoid payment of a fee, the amendment may be treated as an application for registration consolidating additional lots with a prior registration.

(4) A fee provided in section 35 of the "state license fee act" shall be paid with each submission of advertising for approval.

(5) In addition to the payment of inspection expenses as provided in section 20, an annual renewal fee provided in section 35 of the "state license fee act" shall be paid.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1979, Act 164, Imd. Eff. Dec. 10, 1979.

565.831 Liability to purchaser for violation, deceptive act or practice, untrue statement, or omission; remedies of purchaser; joint and several liability; contribution; tender of reconveyance; limitation of action.

Sec. 31. (1) A person who disposes of subdivided lands in violation of section 6 or who, in disposing of subdivided lands engages in a deceptive act or practice, makes an untrue statement of a material fact or omits a material fact required to be stated in a registration statement or property report or necessary to make the statements made not misleading, is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser did not rely on the untruth or omission.

(2) In addition to any other remedies, the purchaser under subsection (1) may recover the consideration paid for the lot, parcel, unit, or interest in subdivided lands together with interest at the rate of 6% per year from the date of payment, property taxes paid, costs and reasonable attorneys' fees, less the amount of any income received from the subdivided lands, upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided lands, he may recover the amount that would be recoverable upon a tender of a reconveyance, less the value of the land when disposed of and less interest at the rate of 6% per year on that amount from the date of disposition.

(3) Every person who directly or indirectly controls a subdivider liable under subsection (1), every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(4) Every person whose occupation gives authority to a statement which with his consent has been used in an application for registration or property report, if he is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in his statement and only if it is proved he knew or reasonably should have known of the existence of the true facts by reason of which the liability is alleged to exist. However, if the person is a registered professional licensed by this state whose statement was part of his representation of another person in rendering professional services, liability hereunder shall not exceed that resulting from a duty to exercise a reasonable degree of care and skill ordinarily possessed and exercised by members of that profession similarly situated.

(5) A tender of reconveyance may be made at any time before the entry of judgment.

(6) An action shall not be commenced pursuant to this section later than 3 years from the time performance of all promises, statements, or representations contained in any registration statement, property report,

purchase agreement, contract, option, or other evidence of a disposition of subdivided lands is to be completed. Where the cause of action arises out of any deceptive act or practice or the omission to state a material fact, the action shall be commenced no later than 3 years from the date the person discovers or should have reasonably discovered the deceit or omission. An action shall not be commenced by a purchaser more than 6 years after the sale or lease to the purchaser.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

565.832 Dispositions of subdivided lands subject to act; jurisdiction of circuit court.

Sec. 32. Dispositions of subdivided lands are subject to this act and the circuit courts of this state have jurisdiction in claims or causes of action arising under this act, in the following cases:

(a) The subdivided lands offered for disposition are located in this state.

(b) The subdivider's principal office is located in this state.

(c) Any offer or disposition of subdivided lands is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed.

History: 1972, Act 286, Eff. Mar. 30, 1973.

565.833 Repealed. 1973, Act 184, Imd. Eff. Jan. 3, 1974.

Compiler's note: The repealed section pertained to validity and consolidation of prior registrations of subdivisions.

565.834 Effect of act on horizontal real property.

Sec. 34. No portion of this act shall have any effect on or take precedence over the application and enforcement within the state of Act No. 229 of the Public Acts of 1963, as amended, being sections 559.1 to 559.31 of the Compiled Laws of 1948.

History: 1972, Act 286, Eff. Mar. 30, 1973.

Compiler's note: Sections 559.1 to 559.31, referred to in this section, were repealed by Act 59 of 1978 .

565.835 Effective date; exception; rules, forms, instructions, and applications.

Sec. 35. The provisions of this act shall take effect October 1, 1973, except that section 19 shall take effect April 1, 1973 and the department shall make available such rules, and all necessary forms and instructions for and may accept and process applications for registration, applications for approval of exemption, applications for approval of advertising and applications for consolidation of registrations and may make examinations, investigations and conduct inquiries incident to such applications prior to October 1, 1973 so that persons regulated by the act can be in compliance therewith on October 1, 1973.

History: 1972, Act 286, Eff. Mar. 30, 1973;—Am. 1973, Act 5, Imd. Eff. Mar. 31, 1973.